



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

May 13, 1976

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ARIZONA ATTORNEY GENERAL

The Honorable Moise Berger
Maricopa County Attorney
400 Superior Court Building
101 West Jefferson
Phoenix, Arizona 85007

Attention: Q. Dale Hatch, Esq.

Dear Mr. Berger:

We are informed that the substance of the opinion rendered by you to Dr. Richard Hanna, Assistant Superintendent, Paradise Valley Schools, 3012 East Greenway Road, Phoenix, Arizona 85032, dated October 7, 1975, School Opinion 75-28, is presently a material issue in the Arizona Public Service v. Phoenix Union High School District, et al., Maricopa County Superior Court Cause No. C 331724; and School District No. 210 v. Arizona Public Service, et al., Maricopa County Superior Court Cause No. C 331838.

Therefore, in accordance with the policy of this office, your opinion will be neither revised nor concurred with pending the resolution of these lawsuits.

Sincerely,

BRUCE E. BABBITT
Attorney General

BEB:FGF:mc



OFFICE OF THE MARICOPA COUNTY ATTORNEY

MOISE BERGER COUNTY ATTORNEY

400 SUPERIOR COURT BUILDING, 101 W. JEFFERSON, PHOENIX, ARIZONA



October 7, 1975

School Opinion No. 75-28

Dr. Richard L. Hanna
Assistant Superintendent
Paradise Valley Schools
3012 East Greenway Road
Phoenix, Arizona 85032

Dear Dr. Hanna:

This letter is in response to your request for an opinion on the following question:

Is the position taken by the Paradise Valley School Board that it will not pay fees to the City of Phoenix for plan checks, architectural drawings, specifications and building permits for any schools legal?

ANSWER: Yes.

DISCUSSION:

There are two cases in Arizona which hold that a state agency delegated by law with the responsibility to perform a governmental function is not subject to the general police powers of a municipal corporation. The Arizona Supreme Court in Board of Regents of Universities v. City of Tempe, 88 Ariz. 299 (1960) held that a State University does not have to pay fees to a city and the Court said:

"The construction and maintenance of a school building is a sovereign activity of the state".

In City of Scottsdale v. Municipal Court of Tempe, 90 Ariz. 393 (1962) the Supreme Court reiterated its position again when it said that a state agency which is performing a governmental function is not subject to the general police powers of a city.

It is my opinion that the Paradise Valley Schools can refuse to pay fees to the City of Phoenix if they are related to the con-

struction and maintenance of school buildings.

A copy of this Opinion is being sent to the Attorney General for his concurrence or revision.

Very truly yours,

MOISE BERGER
MARICOPA COUNTY ATTORNEY

Q. Dale Hatch
Q. Dale Hatch
Deputy County Attorney